SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2504-16T6

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VICTORIA WILLIAMS,

Defendant-Appellant.

Submitted April 3, 2017 - Decided April 10, 2017

Before Judges Fisher and Vernoia.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Complaint No. W-2017-000013-2012.

Joseph E. Krakora, Public Defender, attorney for appellant (Mary Ellen Gaffney, Designated Counsel, on the brief).

Grace H. Park, Acting Union County Prosecutor, attorney for respondent (Milton S. Leibowitz, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant filed this expedited appeal, pursuant to Rule 2:9-13(a), to challenge the trial court's February 14, 2017 order, which granted the State's motion for pretrial detention pursuant to the new Bail Reform Act, N.J.S.A. 2A:162-15 to -26 (the Act). In light of the unusual circumstances presented, we find it was fundamentally unfair for the trial court to apply the Act in this case, and reverse.

Defendant was charged on November 7, 2016, by way of a complaint-warrant, with having committed on November 4, 2016, second-degree robbery, N.J.S.A. 2C:15-1(a)(1), second-degree burglary, N.J.S.A. 2C:18-2(a)(1), and fourth-degree obstruction, N.J.S.A. 2C:29-1(a). She was also charged at the same time in a separate complaint-warrant with second-degree theft, N.J.S.A. 2C:20-3(a). Bail was set at $100,000, with a condition that ten percent of that amount could be posted to secure defendant's release. Bond was provided and defendant released.

On December 19, 2016, defendant appeared before the trial court for a pre-indictment disposition conference. Because the State failed to provide discovery, the trial judge adjourned the conference and warned the State that if full discovery was not provided by January 3, 2017 — the date to which the conference was adjourned — the complaints would be dismissed.

The State failed to fully comply and, on January 3, 2017, the judge sua sponte dismissed the pending complaint-warrants. Later that day, however, the State provided the outstanding discovery and filed a new complaint-warrant that again charged defendant with second-degree robbery, second-degree burglary, and fourth-degree obstruction, arising from the same alleged conduct upon which the first November 17, 2016 complaint-warrant had been based.

On February 10, 2017, defendant appeared with regard to the new complaint-warrant, and the State moved for detention pursuant to the Act, which, in the interim, became effective.[1] Defendant objected to the application of the Act because of the circumstances outlined above. In her oral decision, the judge implicitly rejected defendant's argument that the Act should not apply here; the judge also found that probable cause was established and pretrial detention required.

In reversing, we conclude that the Act should not have been applied; we do not mean to suggest that, if it were appropriate to apply the Act, the judge's ruling was erroneous. The circumstances more than adequately demonstrated probable cause and the information provided by way of the Public Safety Assessment

[1] The Act's effective date is January 1, 2017.

(PSA) and Preliminary Law Enforcement Incident Report (PLEIR)[2] strongly suggest the propriety of pretrial detention. In examining the judge's decision in light of our standard of review, see State v. C.W., __ N.J. Super. __ (App. Div. 2017) (slip op. at 3), we would — but for the peculiar circumstances presented — find no abuse of discretion in the judge's ruling.

But the circumstances demonstrate it would be fundamentally unfair to apply the new procedures required by the Act in this case. Our doctrine of fundamental fairness "serves to protect citizens generally against unjust and arbitrary governmental action, and specifically against governmental procedures that tend to operate arbitrarily." Doe v. Poritz, 142 N.J. 1, 108 (1995) (quoting Justice Handler's dissenting opinion in State v. Ramseur, 106 N.J. 123, 377 (1987)).[3]

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[2] The nature and purpose of these documents, as well as the processes required by the Act, are more thoroughly discussed elsewhere. See State v. Ingram, __ N.J. Super. __ (App. Div.), leave to appeal granted, __ N.J. __ (2017); State v. Robinson, __ N.J. Super. __ (App. Div.), leave to appeal granted, __ N.J. __ (2017).

[3] Because we find that the doctrine of fundamental fairness requires reversal, we need not consider whether the Act's application in these circumstances violates federal or state ex post facto or due process principles.

Defendant has been subjected to pretrial detention solely because of the State's unwillingness or its inability[4] to comply with its discovery obligations.[5] Had the State complied with the trial court's directions regarding discovery, the complaint-warrants that issued prior to January 1 would not have been dismissed and the Act, upon the issuance of a new complaint on the same pre-January 1 charges, would not have been triggered. Defendant should not have the conditions of her release altered merely because of the State's acts or omissions.

The order under review is reversed and the matter remanded for the setting of bail pursuant to pre-Act law in conformity with the letter and spirit of this opinion.[6]

[4] The State claims, without support in the record on appeal, that the only document that was not turned over on January 3, 2017, was a detective's investigative report. The State claims it was not provided "because the detective had family matters and was ill." For present purposes, we assume the truth of these assertions.

[5] We cannot tell from this record whether these circumstances were innocently or deliberately put in motion by the State. For purposes of today's decision, it doesn't matter.

[6] We do not preclude, if possible, the reinstatement of the bond on the original complaints as the bond on the new complaint.